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SUBJECT: SUPREME COURT HEARS FACH TRIAL APPEALS

1. SUMMARY. SUPREME COURT NOV 22 BEGAN HEARING ARGUMENTS IN CASES OF FOUR DEFENDENTS IN AIR FORCE (FACH) TRIAL (SANTIAGO 5946). DEFENSE CASE, PRESENTED BY FORMER U.CHILE LAW SCHOOL DEAN EUGENIO VELASCO, CLAIMS BASIC ARTICLE IN CODE OF MILITARY JUSTICE WHICH IN EFFECT BARS APPEALS TO CIVIL COURTS IS UNCONSTITUTIONAL. MEANWHILE, SUPREME COURT HAS REPORTEDLY GRANTED WRIT OF HABEAS CORPUS (AMPARO) IN CASE OF PERSON DETAINED UNDER STATE OF SIEGE REGULATIONS. BOTH ITEMS REPRESENT MAJOR DEPARTURES FOR SUPREME COURT WHICH HAS HERETOFORE TOTALLY REJECTED JURISDICTION OVER SECURITY CASES. END SUMMARY.

2. FACH CASES ARE THOSE OF FORMER COLONEL ROLANDO MIRANDA PINTO, CORP. JOSE OLIVARES MATURANA, SGT. JUAN RAMIREZ SAAVEDRA, AND CIVILIAN NESTOR ROSALES GARCIA. CASES ARE BEING ARGUED BY VELASCO, HERNAN MONTEALEGRE, AND MARCELO CROXATTO.

3. DEFENSE CONTENTION IS THAT ARTICLE 74 OF CODE OF
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MILITARY JUSTICE, WHICH EMPOWERS COMMANDING GENERAL "IN TIME OF

WAR" TO CONVENE MILITARY TRIBUNALS AND TO "APPROVE, REVOKE, OR MODIFY" THEIR SENTENCES, IS UNCONSTITUTIONAL SINCE IT CONTRAVENES ARTICLE 86 OF CONSTITUTION WHICH GRANTS SUPREME COURT "DIRECT SUPERVISION -- OVER ALL THE TRIBUNALS OF THE NATION."

4. AT START OF HEARINGS AFTERNOON NOV 22, COURT FIRST REQUESTED ARGUMENTS ON WHETHER IT SHOULD LISTEN TO SUBSTANCE OF CASES. AFTER BOTH VELASCO AND MONTEALEGRE PRESENTED THEIR ARGUMENTS, COURT TOOK QUESTION UNDER ADVISEMENT FOR SUBSEQUENT RULING, BUT DECIDED TO ALLOW LAWYERS TO PRESENT THEIR ARGUMENTS ON SUBSTANCE. CASES WILL BE HEARD FOR AT LEAST ANOTHER WEEK, WITH NO INDICATION WHEN FINAL RULING WILL COME.

5. MEANWHILE, ACCORDING TO PROMINENT DEFENSE LAWYER, SUPREME COURT TWO OR THREE DAYS AGO GRANTED WRIT OF HABEAS CORPUS (AMPARO) TO PERSON DETAINED UNDER STATE OF SIEGE REGULATIONS. CASE ALLEGEDLY INVOLVED STEWARDESS FOR LAN-CHILE HELD AT TRES ALAMOS DETENTION CAMP ON OUTSKIRTS OF SANTIAGO. ALTHOUGH COURT ORDERED EXECUTIVE BRANCH (I.E. MILITARY AUTHORITIES) TO RELEASE HER, SOURCE WAS UNSURE WHETHER SHE HAD ACTUALLY BEEN FREED.

6. COMMENT. THIS IS FIRST TIME SUPREME COURT HAS HEARD ARGUMENTS ON CASES STEMMING FROM MILITARY TRIBUNALS UNDER "STATE OF WAR" PROVISIONS. ALSO, IF TRUE, FIRST TIME IT HAS GRANTED AMPARO TO A SECURITY DETAINEE. IN BOTH INSTANCES, COURT HAS UP TO NOW REJECTED ALL SUCH REQUESTS. WHILE IT WOULD BE PREMATURE AT THIS POINT TO CONCLUDE THAT CIVILIAN JUDICIARY HAS SUDDENLY DECIDED TO ASSERT ITSELF, STILL THESE TWO EVENTS ARE REMARKABLE. POPPER

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